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IRELAND AND CANADA.

STUDIES IN COMPARATIVE CONSTITUTIONAL
LAW AND POLITICS.

BY

HUGH H. L. BELLOT, B.O.L., M.A.,

Of the Inner Temple and Midland Circuit, Barrister-at-Law.

LONDON:

REEVES & TURNER,

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PREFACE.

THE bearing of Canadian political institutions upon the Home Rule question has recently been the subject of so much controversy, both in the House and outside, that I feel that no apology for the appearance of the following pages is needed. So many inaccurate statements have been made, and so many consequent misconceptions have arisen concerning Canadian political history, that I have every confidence in placing before the public the actual facts. Whether the conclusions which I draw be correct or not, the fact remains that our kinsmen across the water have solved the questions of Home Rule and Local Self-Government, perhaps more satisfactorily than any other country in the old or the new world, and this alone, I submit, is a sufficient and cogent reason for the study of Canadian affairs, and for ascertaining their bearings upon the similar problems seeking for solution in this country. I take this opportunity of acknowledging my indebtedness

to the Editors of the *Westminster Review* for kindly allowing me to reproduce here an article entitled "The Home Rule Bill and the Canadian Constitution," which appeared in the May number of this year.

HUGH H. L. BELLOT.

8, KING'S BENCH WALK, TEMPLE, LONDON,
August 1, 1893.

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CHAPTER I.

THE HOME RULE BILL AND THE CANADIAN CONSTITUTION.

THE close analogy of the principles embodied in the Government of Ireland Bill, 1893, with those which go to build up the Canadian Constitution is too remarkable for a mere coincidence. And, moreover, we have reason to believe that Mr. Bryce, our greatest constitutional lawyer, had a share, and that a large one, in framing the present Bill. One of the chief objections urged by the opponents of the Home Rule Bill is that it will be impossible in practice to distinguish and keep apart, without constant friction and disorganization of all government, both here and in Ireland, Imperial and purely Irish affairs. Now this attitude of "impossibility" is a notorious failing with the Conservative party, but it is all the more curious since what they declare to be impossible and impracticable under the Government of Ireland Bill has actually been carried out and been in operation for twenty-six years in Canada, and that, too, under the British North America Act, 1867, for the placing of which upon the statute-book the Conservative party was responsible.

The Dominion of Canada is now composed of the seven organized provinces of Ontario, Quebec, Nova

Scotia, New Brunswick, Manitoba, British Columbia, and Prince Edward's Island, the one organized district of Keewatin, and a vast tract of land, sparsely inhabited, known as the North-West Territories.

The Constitution of Canada may be briefly described as follows:—For the Dominion of Canada, as a whole, has been established an Imperial Parliament, consisting of the Queen, a Senate, and a House of Commons. For each province within the Dominion have been established Provincial Legislatures, consisting, as a rule, of two houses, viz.:—Legislative Councils and Legislative Assemblies. Since, in examining the nature of the Dominion Parliament, it will be found necessary to refer to the Provincial Legislatures, it will be conducive to clearness if the latter are first described.

The Legislative Assemblies, then, are the popularly elected bodies, but the qualifications of members and electors vary very considerably in the different provinces. Each province may decide for itself the qualifications of the electors, the distribution of seats, the qualifications of members, and the methods by which they shall be elected.

Four provinces, viz.:—Quebec, Nova Scotia, New Brunswick, and Prince Edward's Island—possess Legislative Councils (*a*). The members of these bodies are nominated by the Lieutenant-Governor of the province. In Nova Scotia the Lieutenant-Governor is under no restriction in his choice of

(*a*) Since writing the above, New Brunswick has abolished its Legislative Council.

councillors; whereas in the remaining provinces certain statutory qualifications have been imposed. The numbers in each Legislative Council vary from thirteen to twenty-four. In Prince Edward's Island, however, an exception occurs: the councillors are elected, the electors being the same as for the Legislative Assembly, and in Charlottetown a fresh election is held every eighth year; whereas in the other districts of the province an election is held every fourth year. In the other provinces, however, councillors hold office for life. A Lieutenant-Governor is appointed for each province by the Governor-General in Council, under the Great Seal of Canada, and he is at the head of the Executive Council of the province.

He is responsible, not to the Crown, but to the Governor-General and the Executive Council for the Dominion. He holds office generally for a period of five years. As head of the Executive Provincial Council, he selects his own Cabinet, although he is constitutionally bound to choose his Ministers from the party which has the confidence of the Legislative or popular Assembly.

His powers are various; but that to which I wish to draw particular attention is his power to assent to or veto Bills, or to reserve them for the consideration of the Governor-General. The numbers of the Cabinet, or the Executive Council, as it is called, vary in the different provinces.

In British Columbia there are only four Ministers; in Prince Edward's Island there are as many as nine. To each Minister, as a rule, some department of State is assigned. In all the provinces the

following departments and offices are already established, viz. :—

The Department of the Attorney-General.

„	„	„ Public Works.
„	„	„ Crown Lands.
„		Office of Secretary of State.
„	„	Treasurer.

And in addition to the above Ontario has a Minister for Education, Quebec one for Agriculture, and Manitoba one for Railways. Very extensive powers have been given to the Education Department in Ontario over the normal, high, public, and separate schools in the province.

The Dominion Parliament is constituted, as has been already stated, of the Queen, a Senate, and a House of Commons. The Crown is represented by the Governor-General, and may veto through the latter any Act passed by the two Dominion Houses, and, indeed may even veto any Act to which the Governor-General has given his assent. The Governor-General is appointed by the Crown, and as head of the Dominion Executive Council, acting under the advice of his Ministry, exercises all the powers belonging to the Crown of summoning, proroguing, or dissolving the Dominion Parliament. Persons with the necessary senatorial qualifications are selected by him to the Senate. By the British North American Act, 1867, s. 22, the number of senators is limited to 72, but this number has since been increased to 80 by various Imperial statutes. A senator, it may be mentioned, holds office for life.

The House of Commons for the Dominion of

Canada is of course an elective body, and consists of 215 members. Since 1885 a uniform franchise has existed throughout the Dominion. The duration of Parliament is quinquennial, subject to the power of the Crown to dissolve it at any time.

As representing the Crown, the Governor-General exercises the supreme executive power. The members of the Executive Council, or the Privy Council for Canada, as it is sometimes called, are chosen by him in accordance with the well-known constitutional principle that they shall be selected from that party which enjoys the confidence of the majority of the members of the House of Commons.

It is now possible to examine the relations which subsist between the Dominion Parliament and the Provincial Legislatures. By section 91 of the British North America Act, 1867, in addition to twenty-nine specific classes of subjects confined to the exclusive legislative authority of the Dominion Parliament, power is conferred upon the Dominion Parliament to legislate "for the peace, order, and good government of Canada in relation to all matters" not assigned to the provinces. And by section 92 of the same Act exclusive legislative powers are granted to the Provincial Legislatures over sixteen specific classes of subjects, No. 16 giving a general power to legislate "on all matters of a merely local or private nature in the province." Now, it might have been expected that this distribution of powers would have given rise to serious conflicts of law. To take one possible instance: "Marriage and Divorce" is one of the subjects

enumerated in section 91 as confined within the exclusive authority of the Dominion Parliament, and it is evident that the solemnization of marriage would come within this general description; and yet "solemnization of marriage in the province" is one of the subjects enumerated in section 92 as within the exclusive authority of the Provincial Legislatures. Upon this point the Judicial Committee of the Privy Council remarked, in *The Citizens' Insurance Company v. Parsons* (b), that "it could not have been the intention that a conflict should exist; and in order to prevent such a result, the two sections must be read together, and the language of the one interpreted and, where necessary, modified by that of the other." But the only serious conflict that has arisen has been due to the Governor-General in Council exercising his power to veto some Act passed by a Provincial Legislature. Between the years 1867 and 1887 some 8,000 Acts were passed by the Provincial Legislatures, and of these only the infinitesimal number of forty-five were vetoed by the Governor-General as head of the Dominion Executive; for it will be remembered that the Crown has only power to veto Acts of the Dominion Parliament. Now, this fact alone goes to show that the Provincial Legislatures keep well within their rights, and that Dominion statesmen have shown wonderful self-restraint and sound common sense in refraining from harassing the Provincial Legislatures, and from interfering with the free play of local self-government. And,

(b) L. R., 7 App. Cas. 96.

further, it is notorious that the decisions of the Appeal Court of the Supreme Court of Canada, the veto when exercised by the Governor-General in Council, the decisions of the Judicial Committee of the Privy Council, and the veto when exercised by the Crown, have been cheerfully and gracefully acquiesced in by the provinces, and loyally accepted by the Dominion of Canada.

It will be apparent that the comparison attempted here is not drawn between England and Canada, but has reference to the relations which exist between the Dominion Parliament and the Provincial Legislatures of Canada on the one hand, and the relations to exist under the Government of Ireland Bill, 1893, between the Provincial Legislatures in Ireland and the Imperial Parliament of Great Britain on the other.

As in a Canadian province, so in Ireland, there is to be a Legislative Council and a Legislative Assembly. The Irish Legislative Council, however, unlike its Canadian model, is to be an elective body, and the councillors are to hold office, not for life, but for eight years, one half retiring every fourth year. In these respects, therefore, the constitution of the Legislative Council is more democratic than that of its counterpart in Canada. The number of councillors is fixed at forty-eight, and a higher property qualification is required to entitle an elector to vote for a councillor than is necessary in the case of the election of members to the Legislative Assembly. This safeguard to the interests of the propertied classes may be said roughly to correspond to the nomination of councillors by

the Lieutenant-Governor of a Canadian province, already referred to.

The Legislative Assembly to be elected on the present Parliamentary franchise is the popular body. It is to be quinquennial instead of being limited to four years, as in the case of the Provincial Legislative Assembly in Canada.

By section 7 (1) of the Government of Ireland Bill, 1893, the Legislative Assembly is to consist of 103 members; and by sect. 7 (3), after the expiration of six years from the passing of the Act, the Irish Legislature "may alter the qualification of the electors and the constituencies, and the distribution of the members among the constituencies, provided that in such distribution due regard is had to the population of the constituencies." It will be remembered that a Provincial Legislative Assembly is entitled to decide for itself the qualification of both its members and electors, and in 1871 Ontario actually re-arranged the constituencies and increased the Assembly from 82 to 89, and in 1885 the number was further increased to 90.

The charge is made that by means of this section 7 (3) the Irish Legislature will be able to jerrymander the constituencies. This has not been the case in Canada, and there is in the case of Ireland the further fact that such proceedings would be absolutely impossible, since it is expressly provided that in any such re-arrangement "due regard" must be paid to the population of the constituencies. Any such jerrymandering therefore would simply be *ipso facto* void. With the exception of the retention of the Irish members in the Imperial Parliament, the

crucial points in the Bill are the distribution of powers and the supremacy of the Imperial Parliament.

The relations to exist between the Irish Legislature and the Imperial Parliament are almost identical with those already described as subsisting between the Dominion Parliament and the Provincial Legislatures in Canada.

It has already been pointed out that certain conflicts of law have arisen in consequence of the inconsistency of sections 91 and 92 of the British North America Act, 1867. It will be remembered that each section did not entirely exclude the other, but that certain classes of subjects were included in both, and it was found necessary to appeal to Her Majesty in Council, who by Her Judicial Committee of the Privy Council decided the interpretation to be placed upon the Act.

Now in the Government of Ireland Bill this blemish has been avoided, and the difficulty therefore does not exist to the same extent. By section 2 of the Bill the powers reserved to the Irish Legislature are expressed in general terms, viz.: "with the exceptions and subject to the restrictions in this Act mentioned there shall be granted to the Irish Legislature power to make laws for the peace, order, and good government of Ireland in respect of matters exclusively relating to Ireland or some part thereof." And then follow sections 3 and 4, containing in specific terms the exceptions and restrictions. It will be observed that the words, "to make laws for the peace, order, and good government," occur in section 91 of the British North America Act, 1867.

It would appear, then, that there is less likelihood of a conflict of law here than in the case of sections 91 and 92 of the British North America Act, 1867, but if any should arise, by section 23 of the Government of Ireland Bill special provision is made for appeal to Her Majesty in Council, the question to be heard and determined by the Judicial Committee of the Privy Council. It follows, then, that, if anything, Ireland will be placed in a more favourable position than a Canadian province in respect of the distribution of powers.

By section 5 (1) of the Government of Ireland Bill the supreme executive power is to be vested in Her Majesty the Queen and the Lord Lieutenant; by (2) an Executive Committee of the Privy Council of Ireland is to be constituted to aid and advise in the government of Ireland; and by (3) "the Lord Lieutenant shall on the advice of the said Executive Committee give or withhold the assent of Her Majesty to Bills passed by the two Houses of the Irish Legislature, subject, nevertheless, to any instructions given by Her Majesty in respect of any such Bill." Here again it will be observed that the Irish Legislature will be in a more favourable position than the Provincial Legislatures, since the Governor-General may veto any Bills passed by the latter bodies, and no appeal lies to Her Majesty. In fact, the supremacy of the Dominion Parliament is absolute and has never been impugned by the provinces; why then should the supremacy of the Imperial Parliament, which is even more absolute, over the Irish Legislature be called in question? And if we compare the supremacy of the Imperial Parliament

over the Dominion Parliament of Canada, we find it is as absolute as it will be over the Irish Legislature, since the powers of the Dominion Legislature are restricted by certain express and implied reservations in favour of the Imperial Parliament. The Dominion Parliament cannot impose any duties as between the different provinces, and cannot alter the leading principles of its Constitution. So much so, indeed, that when it was necessary to provide for the representation of the North-West Territories in the Dominion an Imperial Act had to be obtained for the purpose. I shall be told, no doubt, that the conditions in Canada and Ireland are totally dissimilar. I say that if they were not precisely similar they were even less favourable in Canada. Before her first instalment of Home Rule, Canada was in actual rebellion. There existed a powerful Orange party; there existed a numerous Roman Catholic party. The latter, in Lower Canada for instance, was in a large majority. Further, there existed not only a difference of race, but a difference of language. It was said that the so-called loyal minority, which posed as the English party, would be oppressed and persecuted by the French Roman Catholic majority. It was said that the Protestant minority would be plundered. And yet none of these apprehensions were fulfilled. The problem of dealing with various races of different creeds, possessing the strongest national and religious feelings, with minorities and majorities in different provinces, has been solved, on the whole satisfactorily, in Canada. Ireland has now to solve essentially the same problem, and why should Ireland fail where Canada

has succeeded? It is further objected that the Irish are incapable of governing themselves. The same apprehension was expressed in the case of Canada, and yet with the sense of responsibility came the capacity for self-government. It is also said that Home Rule means something more than local self-government. What if it does? I have shown that Home Rule, as set forth in the Government of Ireland Bill, is almost identical with Home Rule in the Canadian provinces, and where it differs it only differs in being slightly more democratic, which is only reasonable, considering the progress in democratic principles that has taken place since the passing of the British North America Act, 1867. The principle of Home Rule under almost precisely the same conditions has solved the problem in Canada; and why, I ask again, should it fail when applied to Ireland?

At any rate, if the analogy which I have drawn is worth anything, appearances are all in favour of the application of this principle to Ireland proving a complete success. The retention of the Irish members at Westminster is, I admit, an anomaly which is not present in the case of Canada, for members of any Provincial Legislative Council or Legislative Assembly are disqualified from sitting in the Dominion House of Commons; but the anomaly is only technical, since each province is directly represented in the Dominion House of Commons, and so long as Ireland pays her share of the Imperial taxation I fail to see upon what principle the Irish members can be excluded.

In conclusion, then, Canada, once discontented,

disloyal, and rebellious, has, under Home Rule, become peaceful, contented, and the most loyal of all our dependencies. The deduction may therefore be fairly drawn, that Ireland, agitated, discontented, and lawless, will under a similar measure of Home Rule become peaceful, contented, and law-abiding, and instead of a source of weakness, will become a tower of strength to Great Britain, and a bond of union to the whole English-speaking race.

CHAPTER II.

THE CANADIAN ANALOGY.

A REJOINDER TO THE BELFAST CHAMBER OF COMMERCE.

IF, as I understand, the reply of the Belfast Chamber of Commerce has had in this country a wide circulation, it is high time that the specious and plausible arguments of the writer should be exposed and discounted; and if this has not been the case, no harm will ensue by recalling a few of the real facts of Canadian Constitutional and Political History. I shall confine myself, then, in this chapter entirely to that portion of the "Reply" which deals with the Canadian Analogy. According to the writer of the "Reply," Mr. Gladstone's comparison of Ireland with Canada is wholly misleading.

Now there are two analogies which may be drawn in this question. One is the analogy of Ireland with Canada as a whole, and the other is the analogy of the relations which subsist between the Dominion of Canada and her provinces with the relations to come into existence under the Government of Ireland Bill between Great Britain and Ireland. In my opinion, Mr. Gladstone had both these analogies in his mind when he made a few brief remarks on this question. It is the latter analogy which has

the greatest bearing on the Home Rule question; and it is impossible that Mr. Gladstone, in framing the Government of Ireland Bill on the very same lines as the British North America Act, 1867 (as most undoubtedly have been the case), should have been unaware of this striking analogy. First of all, says the writer of the "Reply," the Canada which Mr. Gladstone described as happy, contented and prosperous, is an entirely different Canada from the Canada of 1837. Of course it is; the British public does not need a Belfast Chamber of Commerce to inform them of facts which can be obtained from any child's text-book of geography.

What Mr. Gladstone meant was that the people of the Canada of 1837, who were then in actual rebellion, in consequence of the large measure of local self-government granted to them by the English Government in 1841, of which he himself was a prominent member, have become happy, contented, and prosperous. Now what were the causes of this rebellion?

The writer of the "Reply" admits that the rebellion "arose from the discontent caused by the tyrannical treatment of the Assemblies by the Governors and by the Executive and Legislative Councils, which were not elective bodies;" but he wisely abstains from going to the root of the question. It will be as well to describe the exact state of affairs in the Canada of 1834. Canada at that time consisted of the two provinces of Upper and Lower Canada. In Lower Canada it was primarily a struggle between two nations. In the popular or representative Assembly the French element pre-

dominated: in the Executive and Legislative Council the English and official or ruling element were in the ascendancy. This struggle, which was really political, became national. "The Executive Government and Legislative Council," says Bourinot, "both nominated by the Crown, were virtually the same body in those days. The English-speaking people were those rulers who obstinately contested all the questions raised from time to time by the popular or French party in the Assembly"(a).

The chief struggle took place over the supplies and civil list. It is an elementary principle of parliamentary government all the world over that to the popular assembly shall belong, as of right, the exclusive control of supplies and the initiation and control of public expenditure. This the English or official party retained in their own hands, and when the French party in the Assembly refused supplies, the casual and territorial revenues, administered and appropriated by the Governor and his officials, were used to render their party independent of the Legislature. Hence the cry of the French party for an elective Legislative Council. But this was not their only cry. Judges sat in both houses, and the seignorial land tenure was a constant source of petty annoyances. The British Government yielded so far as to disqualify the judges from sitting in the popular Assembly; but they were still allowed to sit in the Executive and Legislative Councils.

In Upper Canada the struggle was not national,

(a) J. G. Bourinot, "Federal Government in Canada": John Hopkins, U. S., 7th Series.

but political. It was a contest between officialism and Liberalism. The same constitution existed as in Lower Canada, and caused much the same results. It was a struggle between the executive and official class and the popular Assembly. On this point, referring to both Provinces, Lord Durham said, in his Report, "I know not how it is possible to secure harmony in any other way than by administering the Government on those principles which have been found efficacious in Great Britain. I would not impair a single prerogative of the Crown; . . . but the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the government in unison with a Representative Assembly, it must consent to carry it on by means of those in whom that representative body has confidence" (*b*).

With what equal truth might this be applied to Ireland, whose wishes, expressed through its representatives, are totally ignored by the so-called Unionists! It was thought at the time that the struggle between the two nationalities might be ended by uniting the two Provinces under one Legislature, and accordingly the Act of 1841 was passed.

"It is noteworthy," says the writer of the "Reply," "that the settlement of 1841 was actually an act of Legislative Union;" it "abolished two legislatures and two executives." But this Union was afterwards found to be a mistake, and the Act of 1867,

(*b*) Lord Durham's Report, p. 106.

which is also an "Act of Union," actually separated the two provinces.

In an argument which purports to be serious, this play upon words is out of place. We on our part maintain that the Government of Ireland Bill will be an "Act of Union," since it will in reality, and not merely verbally, unite two countries. "But," says the writer of the "Reply" naïvely, "the settlement of 1841 did not produce contentment;" and then he gives reasons for this discontent, which can only have been evolved out of the brain of one afflicted with "Ulsteria." At any rate it is far from the actual facts of the case.

By the Act of 1841 an equal number of representatives in the popular assembly was given to Upper and Lower Canada. Now at this period the population in the latter province was much larger than that of the former, and considerable discontent was shown by the French party; but as time went on the population of Upper Canada increased so much as to largely out-number that of Lower Canada, and this caused similar discontent on the part of the upper province. Although, therefore, Lower Canada had lost this cause of complaint, there existed other and serious ones. The French language had been abolished by the Act of 1841 in all official documents and parliamentary proceedings, and this was a source of the most intense annoyance to the French in Lower Canada. A further cause of discontent to both provinces was the absence of that responsible government recommended by Lord Durham in the passage quoted above. Owing to the obstinacy of Lord Metcalfe

during his Governor-Generalship, this leading principle of parliamentary government was not allowed to be applied, and it was not until after the arrival of Lord Elgin in 1847, that the principle of the responsibility of the Cabinet to the popular legislature—without which any constitutional government is unworkable—was established. But although matters ultimately came to a deadlock, much good work was effected in the meantime. It has been seen how the principle of responsible government was established; the popular assembly obtained control thereby over taxation, supply and expenditure, and the civil list was placed on a permanent and equitable basis. Municipal institutions, proposed by Lord Durham in his Report “as a matter of vital importance,” were firmly established. In Upper Canada the Clergy Reserves question was settled, and the lands sold for public or municipal purposes; and in the lower province the seigniorial land tenure was abolished. The deadlock which occurred in the legislature arose, then, from the two questions which still remained—viz., the representation according to population demanded by Upper Canada, and resisted by the lower province as an unwarrantable interference with the security guaranteed to it under the Act, and the re-introduction of the French language demanded by the lower province, the abolition of which was regarded as a personal insult. So much irritation was thus caused, that all government became practically impossible, and the result was another “Act of Union”—the British North America Act, 1867—which separated the two provinces, giving to each separate legisla-

tures. The moral to be drawn here is, that when a constitution is distasteful to the majority of the people who live under it, no mere words, such as "Act of Union" will render it workable. That the writer of the "Reply" should seriously claim this as an argument in his favour is ridiculous, since the Act of Union of 1867, which centralised the government for national purposes, decentralised it as much as possible for local affairs. This is exactly what the Government of Ireland Bill proposes to do; but according to the writer of the "Reply," if the Dominion Parliament decentralises, it is an "Act of Union;" if Great Britain decentralises, it is an act of separation!

After giving an almost complete list, in large type, of the exclusive powers conferred upon the Dominion Parliament, the same writer proceeds:—"The provinces *only reserved(c)* for themselves the exclusive right to legislate on such local matters as *the constitution of the province*, the taxation and raising money for provincial purposes, management and sale of provincial lands, establishment and management of prisons, hospitals, asylums, municipal institutions, licences, local works and undertakings, property, and civil rights in the province; the administration of justice, education, and generally all matters of a local or private nature in the province." Now each of these powers is contained in a separate sub-section of section 92 of the Act, but in the "Reply" they are all lumped together in order to make it appear to the reader as if it was only one

(c) The italics are mine.

insignificant section. And the list is not even complete.

These powers are even more ample than those proposed to be given to the Irish Legislature to be created under the Government of Ireland Bill. For instance, "the powers of the Irish Legislature shall not extend to the making of any law whereby any person may be deprived of life, liberty, or property, without due process of law, or may be denied the equal protection of the laws, or whereby private property may be taken without just compensation" (*d*).

Whereas, as has been seen, exclusive powers over those matters have been conferred upon the Provincial Legislatures, in Ontario, for example, the municipalities may take land by compulsory purchase without any compensation for disturbance and severance, and "the principle of betterment" is well understood and applied in the smallest village municipality (*e*).

It is evident, then, that to this extent the powers to be conferred upon the Irish Legislature are not so full as in the case of the Canadian Provincial Legislatures.

This clearly is an attempt to extol the authority of the Dominion Parliament at the expense of the Provincial Legislatures; an attempt to belittle provincial institutions in order that the powers proposed to be given to Ireland may appear so much greater than those granted to the provinces. Now it is

(*d*) Government of Ireland Bill, 1893, s. 4.

(*e*) The Consolidated Municipal Act. Statutes of Ontario, 1892.

perfectly evident that the very fullest local self-government has been granted to the provinces of Canada that is compatible with a Central National Parliament. This attempt, therefore, fails, and its very failure is an additional argument in favour not only of the present Government of Ireland Bill, but of a Bill containing even ampler provisions for self-government in Ireland.

We are then told that the sharp division of race, language, and religion, referred to by Mr. Gladstone, "is mastered and moderated by the preponderance of other interests which overspread the vast continent comprised in the Dominion. The million of French in Quebec, or the 1,900,000 Roman Catholics within the Dominion, find that counterpoise in the other races and denominations contained in the 5,000,000 which constitute the Dominion population. The ascendancy of provincial majorities is thus absorbed in the representation of the whole Dominion, just as the ascendancy of the Irish majority is merged in the Parliament of the United Kingdom." If this be so, what becomes of the argument for the exclusion of the Irish Members from the Imperial Parliament? and what becomes of the argument that the Irish Members' votes ought not to weigh in deciding the Home Rule question because the majority of the English Members are opposed to it?

But in the very next paragraph we are told exactly the opposite. In Quebec, we are told, are 1,000,000 French Catholics, and 400,000 Protestants; the pretensions of the priests have never been exceeded since the days of Thomas à Becket; the Courts are impotent to restrain their interference

with civil rights, and the supremacy of the Church is unquestioned. We were told in the preceding paragraph that the 1,000,000 Frenchmen in Quebec find this counterpoise in the other races and denominations. Clearly, then, these two statements cannot both stand. They are illogical in the extreme. Either the million French Catholics find their counterpoise, and the 400,000 Protestants are not oppressed, or the latter are oppressed and the former do not find their counterpoise. Even a person afflicted with "Ulsteria" cannot both eat his cake and have it.

We are next told that "one-sixth of the provincial revenue of Quebec is applied to the maintenance of ecclesiastical institutions." Now it appears to me that if rather more than two-thirds of the population decide to spend one-sixth of the total revenue in supporting this particular form of religion, when they are entitled to spend two-thirds, they are fully within their rights, although personally I am opposed to all state-aided religions.

Now what are the facts. In Canada the bulk of direct taxation is levied on real property. But there are certain exemptions. All Government and public property, places of worship, and a great number of buildings connected with scientific, educational and charitable institutions, are exempt from taxation.

In the province of Quebec the Church of Rome has accumulated a vast amount of valuable property, especially in and near Quebec and on the Island of Montreal. The value of these exemptions is estimated at many millions of dollars. Strenuous exertions have been made in the Province of Ontario to

narrow and restrict these exemptions, but without avail; the interests of the Protestant denominations are too powerful, and in Quebec any attempt would be quite futile. The reason for this will be seen when it is stated that the true numbers of Roman Catholics in Quebec is 1,291,969 for the year 1891, out of a total population of 1,488,535, thus leaving 196,566 to be accounted for. But even these are not all Protestants; for a large number are pagan Indians, and persons of any or no religious denomination.

In the Quebec Sessional Papers, 1891 (No. 3), in which are the returns for the year ending 30th June, 1890, under the head of "Special Expenditure," occurs the following item, viz., "Settlement of the Jesuits' Estates, \$400,000."

The facts of this case are simply these. When the Order of the Jesuits was suppressed in 1773 their estates were confiscated by the Imperial authorities in 1800, and afterwards transferred to the authorities of the former province of Canada.

A large portion of these estates was at the time of the confederation ceded to the Province of Quebec. Since the year 1799 repeated protests were made by the heads of the Roman Church, who contended that the property ought to be vested in them. In order to settle this vexatious claim, which had given rise to considerable religious feeling, the Provincial Government offered to settle the claim by paying the sum of \$400,000 as a compensation to the Order of the Jesuits which had been revived in 1887. This offer was accepted by the procurator of the Jesuit Fathers, although he

had demanded \$990,009, and had valued the property at \$2,000,000. The Act of 1888 was accordingly passed, which, however, did not admit any legal but only a moral claim on the part of the Order (*f*).

The heated controversy which consequently arose was carried to the floor of the Dominion House of Commons. A resolution was formally moved asserting that the Government should have at once disallowed the Act as beyond the power of the Provincial Legislature. That was defeated by 188 to 13. In a minute of the Council, which was approved by the Governor-General, it was declared that "the subject matter of the Act is one of provincial concern, only having relation to a fiscal matter entirely within the control of the legislature of Quebec."

Now, according to the Returns for the Province of Quebec, the latest which are yet to hand in this country, viz., those for the year 1890(*g*), there is not, with the exception of this "special expenditure" of \$400,000, a single item which can be described in any manner whatever as "applied to the maintenance of ecclesiastical institutions;" and, indeed, any such application of revenue would be *ultra vires* under section 93 of the British North America Act, 1867, and the cases which decide the interpretation to be placed on that statute (*h*).

To represent, therefore, an extraordinary and special payment, which is classed in the returns

(*f*) Statutes of Quebec, 1888, Chap. XIII.

(*g*) Quebec Sessional Papers, 1891.

(*h*) *Board of School Trustees v. Granger*, 28 Grant, Ch. 570.

under the head of "special expenditure," as an annual payment of one-sixth of the revenues of the province towards the maintenance of ecclesiastical institutions, is simply scandalous; and for the credit of the Belfast Chamber of Commerce I can only assume that its executive committee is entirely ignorant of the real facts, and has trusted to the honesty of some party hack. And, moreover, just as in Canada any such application of revenue is illegal, so in Ireland, under the Government of Ireland Bill, the Irish Legislature is expressly prohibited from making any law "respecting the establishment or endowment of religion, or prohibiting the free exercise thereof, whether directly or indirectly" (i).

The writer continues, "the exchequer is practically empty." Referring to the Returns for 1890, I find the following:—

<i>Receipts.</i>		<i>Expenditure.</i>	
\$	cts.	\$	cts.
5,798,940	29	5,273,595	86
		525,344	43
		5,798,940	29 (k)

According to the writer of the "Reply," a balance of over half a million dollars really means an exchequer which is practically empty. Again, "and in order to make both ends meet, the commercial classes—notably those of Montreal—are subjected to special taxation."

(i) Government of Ireland Bill, sect. 4 (1).

(k) Quebec Sessional Papers, 1891, No. 3.

Now there is an Act (l) by which certain direct taxes have been imposed on certain commercial corporations throughout the province of Quebec, and the Judicial Committee of the Privy Council have upheld the Canadian Courts in deciding that this statute is *intra vires* (m).

The mere assertion, unsupported by any evidence of any sort or kind, that the commercial classes of Montreal are subjected to special taxation, I decline to believe. As far as I have been able to ascertain, there is not a word of truth in this assertion.

The statement that "The Courts of law have shown themselves in well-known instances impotent to restrain the interference of the ecclesiastical authorities with civil rights," is also a mere assertion, as groundless as the preceding. In fact, the Act of 1888, imposing certain direct taxes on certain commercial corporations, was originally passed in 1882, and was declared by the Superior Court of Quebec to be *ultra vires*. The Court of Queen's Bench of the province of Quebec, however, reversed this decision of Mr. Justice Rainville by the majority of three judges to two, and the Judicial Committee of the Privy Council affirmed the decree of the Court of Queen's Bench (n).

Only one other statement calls for any remark. The rest are entirely beside the question. A quotation from Mr. Justin McCarthy's History is given with approval. It is: "so far as one may judge of

(l) Statutes of Quebec, 1888, c. xi.

(m) *Bank of Toronto v. Lambe*, L. R. 12 App. Cas. 575.

(n) *Ibid.*

the tendencies of modern times, it would seem that the inclination is to the formation of great State systems. The days of small independent States seem to be over." Now, whether this statement is absolutely accurate I shall not question here; but it is obvious to anyone who takes the trouble to read the signs of the times that the modern tendency is centralization for national purposes, combined with decentralization in local affairs.

In conclusion, then, I may fairly claim that the writer of the "Reply" has entirely failed to prove his case. His statements are either devoid of foundation, or inaccurate, or inconsistent, and his conclusions are consequently worthless. No one with any real knowledge of Canadian affairs will venture to assert that the Canadian Constitution has not on the whole been a complete success, much less that it has broken down. Of course, the Dominion Parliament and the Provincial Legislatures have made mistakes from time to time; but what constitutional government has not? "Our English Parliament," said Mr. Gladstone recently in the House, "has made a multitude of gross and culpable mistakes, and has adhered to them, fought for them, and maintained them"(o). To all, therefore, who accuse Canadians of failure in national or local government I would say, "He that is without sin among you, let him first cast a stone."

(o) *Times*, 21 June, 1893.

CHAPTER III.

LORD RANDOLPH CHURCHILL ON THE CANADIAN
CONSTITUTION.

A REPLY.

UPON his re-appearance in the field of English politics, Lord Randolph Churchill, fresh from his victories in Mashonaland, has assumed the rôle of a constitutional lawyer. In the May number of the *Westminster Review*, I pointed out the close analogy of the relations which subsist between the Dominion Parliament of Canada and the Provincial Legislatures with the relations to be created by the Government of Ireland Bill between the Imperial Parliament and the Irish Legislature. I also pointed out that the conditions under which Home Rule was granted to Canada were much the same as the present conditions in Ireland. In his speech, delivered at Macclesfield on June 7 (a), Lord Randolph urged upon his audience the completeness of this analogy. He is reported to have said, "this is the comparison I propose to draw. . . . You must contrast the relationship between the Dominion Parliament of Canada and its Provincial Legislatures with the

(a) See *Times*, June 8, 1893, and *Manchester Courier*, same date.

relations of the Imperial Parliament and the Irish Legislature. Thus you will get a perfect exemplification and a perfect picture of what has happened in Canada and what must happen in Ireland." Moreover, he insisted again and again that the circumstances under which the Canadian Constitution was created are precisely similar to those which surround the Irish question to-day. But then he attempted to show how, in practice, this Canadian Constitution has utterly broken down and has resulted in miserable failure, and that the same result is inevitable in Ireland under the present Bill. Now, here I join issue, and I shall endeavour to prove that this assertion of failure is entirely unsupported by the evidence adduced by Lord Randolph, and, on the contrary, is quite at variance with the real facts of Canadian political history.

Lord Randolph commences his course of instruction in constitutional law by telling his audience that the Dominion Parliament of Canada consists of two Chambers—a Senate, and a House of Commons. This Parliament, he says, "can, and does, and is entitled to legislate and govern unrestrained on every matter which is of any concern to Canada—just the position which the Imperial Parliament of England occupies towards the Irish Parliament which is proposed." Now, the Dominion Parliament consists of the Queen, a Senate, and a House of Commons, and, so far from being able to legislate as it pleases, any alteration in its constitution can only be effected by an Imperial Statute (*b*).

(*b*) See p. 17.

Mr. Justice Gray, in his judgment in the Chinese Tax case, said, "The British North America Act, 1867, was framed not as altering or defining the changed or relative positions of the provinces towards the Imperial Government, but solely as between themselves;" that the Imperial Parliament, "as the paramount or sovereign authority, could not be restrained from future legislation. The British North America Act, 1867, was intended to make legal an agreement which the provinces decided to enter into as between themselves, but which, not being sovereign states, they had no power to make. It was not intended as a declaration that the Imperial Government renounced any part of its authority."

Lord Randolph goes on to inform his audience that the great object of the Act was the protection of minorities, and to attain this object a number of "paper safeguards" were inserted. The principal "safeguard," continues Lord Randolph, was the institution of second Chambers. "In the beginning," says his Lordship, "all the provinces had Second Chambers, except Ontario and British Columbia, and those provinces only entered the Union with Canada on the condition that they had no Second Chamber. . . . It cannot be said there is any unfairness in their election. The Members of the Second Chamber are elected by the people." Now, unfortunately for his Lordship, in none of the Second Chambers, except in that of Prince Edward's Island, are the Members elected by the people. They are nominated by the Lieutenant-Governors of the respective provinces. Legislative

Councils in Canada have been, and are, in process of being abolished, chiefly because they are non-elective bodies; secondly, because minorities are sufficiently protected by law; and thirdly, by reason of their expense.

In Ontario, previous to 1867, a long struggle had been going on between the Legislative and Executive Councils, whose members were nominated by the Crown, and the popular Assembly; all reforms were obstinately contested and opposed by this official class, and it was not until, in 1848, when the principle of the responsibility of the Cabinet to the majority in the popular Assembly was recognized, that any constitutional government became possible. With the knowledge of these facts before them, it should not be a matter of surprise that the people of Ontario determined to abolish their Second Chamber. Second Chambers, then, being non-elective in Canada, but elective in the proposed Irish Legislature, the whole of Lord Randolph's argument on this point falls to the ground.

The next "paper safeguard" referred to by Lord Randolph is the power of veto residing in the "Viceroy and the Colonial Governors." This veto, according to Lord Randolph, "is perfectly useless, because it never makes its appearance; and if it does it is immediately resisted and put out of the way by the Legislature. That has been the result of the supreme veto of the Viceroy of the Dominion Government in Canada." Now what is the true history of the exercise of the veto in Canada? First, the Lieutenant-Governor of a province must assent to, veto or reserve for the consideration of

the Governor-General all Bills passed by the Provincial Legislature (c). Now this power of veto is seldom exercised by a Lieutenant-Governor. Provincial Acts are frequently referred to the Supreme Court of the province, from whence an appeal lies to the Judicial Committee of the Privy Council. Whenever the Lieutenant-Governor has assented to a Bill he must send a copy thereof to the Governor-General. Secondly, the Governor-General, within one year from the receipt of a Provincial Act assented to by a Lieutenant-Governor, may disallow the same, and where a Provincial Bill has been reserved for his consideration, the same has no operation unless within one year from the date of its reservation it receives the assent of the Governor-General. A lengthy correspondence took place between the Dominion authorities and the Home Office as to the powers of the Crown over provincial legislation. It was finally settled, in 1877, that the Governor-General could only disallow Provincial Acts *in Council*, i.e., on the advice of his ministers, and as a matter of fact, ever since the British North America Act, 1867, the Governor-General has invariably so acted. It is, therefore, now established that the Crown cannot interfere with provincial legislation. This power has been exercised with extreme caution, and comparatively seldom.

Of the 8,000 Acts passed by the Provincial Legislatures in the years 1867 to 1887, only forty-five have been disallowed. This small number is attributed by Lord Randolph to the impotency and

(c) British North America Act, 1867, s. 90.

fear of the Dominion Parliament. But this is not so. The real reason is this: where such Acts are altogether illegal and unconstitutional, they are frequently so declared by the Supreme Court of the province; *e.g.*, Mr. Justice Gray, of the Supreme Court of British Columbia, decided the Chinese Tax Bill, 1878, to be *ultra vires*, and consequently unconstitutional and void (*d*).

Where such Acts are partially illegal, or unconstitutional, or prejudicial to the general interests of the Dominion, the usual practice is to give the Provincial Legislature the opportunity of considering and discussing the objection raised, and of remedying the same. And, as a general rule, Provincial Bills are so amended, and consequently the veto of the Governor-General is not called into operation. And, moreover, by the Act which established, in 1875 (*e*), the Supreme and Exchequer Courts of the Dominion, provision is made whereby special jurisdiction is conferred on those Courts in all controversies between the Dominion and a province, or between the provinces, or relating to the validity of Provincial Laws, wherever any province has passed an Act agreeing to such jurisdiction. Such Acts have already been passed by British Columbia in 1882 (*f*), by Nova Scotia in 1884 (*g*), and by Ontario in 1887 (*h*). From these Courts an appeal lies to the Judicial Committee of the Privy Council by permission of the Judicial Committee.

(*d*) Brit. Col. Sess. Papers, 1879.

(*e*) 38 Vict. c. 11.

(*g*) N. S. R. S., 1884, c. 111.

(*f*) B. C., 45 Vict. c. 2.

(*h*) O. R. S., 1887, c. 42.

Thirdly, the Governor-General in Council must assent to, veto, or reserve for the consideration of the Crown, all Bills passed by the Dominion Parliament. Previous to 1878, the old practice was to reserve certain Bills. Of the twenty-one Bills thus reserved, eleven received the royal assent. Finally, the Queen in Council may disallow any Act of the Dominion Parliament, even where assented to by the Governor-General in Council, within two years after the receipt of a copy thereof, which must be immediately forwarded to the Secretary of State. Since 1878, it has not been the custom for the Governor-General to reserve Bills, as the power above described is considered sufficient for all purposes. During the years 1841 to 1867, nine Acts of the Canadian Legislature were disallowed by the Crown.

It will have been observed that this right of interference has been very sparingly exercised by the Crown. And this is put down by Lord Randolph to the weakness of the Crown's supremacy. But this is far from being the case. The Crown has acted upon the principle of never interfering, if possible, with Colonial legislation, except where it is of an imperial nature, or an infringement of some constitutional principle. It is the usual practice of the Crown, not only in the case of Canada but of all the Colonies and dependencies, to point out, in despatches from the Secretary of State to the Governor, any errors, defects, or omissions, and to caution Colonial Legislatures as to the spirit in which certain exceptional powers should be exercised so as to avoid abuse or oppression. And this practice has resulted in benefit to the Colonies

without any loss to them of their rights of local self-government (*i*).

As illustrations of this alleged failure of the veto, Lord Randolph quotes the cases of Mr. "Letaille" St. Just, Mr. Mercier, and the Manitoba Railway Bill. I will deal with each in detail. Unfortunately for Lord Randolph, neither the case of the Hon. Letellier de St. Just, nor of Mr. Mercier, have anything to do with the principle of the veto. The facts of the *Letellier case* are briefly these:—In 1878, M. Letellier dismissed his Ministers, who had the confidence of the majority in the Legislature. A petition by certain members of the dismissed Ministry, praying for the dismissal of M. Letellier, was presented to the Governor-General. This petition was communicated to the Dominion Parliament. The two Houses disagreed upon the merits of the case, but in the following year both Houses united in censuring the dismissal of the Quebec Ministry. Upon the Cabinet advising the removal of M. Letellier, the Governor-General sought the advice of the Home Office.

Sir M. Hicks-Beach, the Colonial Secretary, replied, "that there can be no doubt that the Lieutenant-Governor of a province has an unquestionable right to dismiss his Ministers, if from any cause he feels it incumbent upon him to do so. In the exercise of this right . . . he should of course maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office; and for any

(*i*) Todd, *Parl. Govt. in the Colonies*, p. 128.

action he may take, he is directly responsible to the Governor-General," and that the Governor-General must act "by and with the advice of his Ministers;" and accordingly M. Letellier was removed by an Order in Council dated 25 July, 1879. The merits of this case were, and are, the subject of much dispute in Canada. It was the first case of the removal of a Lieutenant-Governor by the Dominion authorities; and although it may be doubted whether the action of the Lieutenant-Governor was wise, and whether the Dominion Parliament was wise in taking the initiative for his removal, this case established the principle that the Governor-General ought to act by and with the advice of his Ministers in purely Canadian affairs. In this case the question of veto was not, and could not be, raised.

In December, 1891, M. Mercier was dismissed by Mr. Angers, the Lieutenant-Governor of Quebec, on the grounds of corruption. In November, 1892, M. Mercier and M. Pacaud, his financial agent, were indicted for malfeasance in office, and acquitted. Mr. Angers was not removed by the Dominion Government, but resigned this year, and was appointed Minister of Agriculture to the Dominion; and even if he had been dismissed, this case would not have been an illustration of the exercise of the veto. It is merely an instance of the same constitutional principle as that involved in the *Letellier* case.

Now, what are the facts of the Manitoba Railway question. By its contract with the Canadian Pacific Railway Company, the Dominion Parliament had granted a monopoly of traffic within certain limits for the period of twenty years to the Pacific

Company. The Government of Manitoba, however, conceived it to be within its powers to construct railways wherever it saw fit, and accordingly passed two Acts in 1886 incorporating certain railways within the restricted limits, and, in 1887, an Act incorporating the Rock Lake, Louis Valley and Brandon Railway Company. These Acts were disallowed by the Dominion Government. Now, here clearly was a case for compromise.

Legally, the Dominion Parliament was bound, and constitutionally it was entitled, to disallow the Acts. Constitutionally, the province was entitled to construct railways within the province. The dispute was settled in a manner honourable to both disputants alike, as such disputes ought to be settled.

The Manitoban Railway Acts were allowed, and the Canadian Pacific Railway Company was compensated for the loss of its exclusive privileges. It may be mentioned that Railway Acts of British Columbia, New Brunswick, and Nova Scotia have been disallowed for similar reasons, viz., that they were contrary to the railway policy of the Dominion.

Lord Randolph then proceeds to give what he professes to call a "detailed history" of the Manitoba School legislation question. The Protestants in this province, says his lordship, being in a majority, have gone "in for Anti-Catholic legislation, and have passed a law abolishing the separate schools for the Catholics which had been guaranteed by the Dominion Parliament. . . . The Lieutenant-Governor could not exercise his veto . . . and the Dominion Government did not dare to veto; perhaps the most unjust act on the part of a majority towards a minority which was ever passed in the

history of Canada. They left the matter to the Courts, and the Privy Council decided that the original Act of the Province was not strong enough to support the claim of separate schools." This resulted, continues his lordship, in a minority being "deprived of all educational resources and of the exercise of its power," and a "Government completely thwarted, completely baffled, and obliged to give it up." His lordship here appeals to history. Let history then decide the issue between us.

The facts of this question were clearly stated by Lord Macnaghten, who delivered the judgment of their lordships upon the hearing of the appeals before the Judicial Committee of the Privy Council (*k*).

These two appeals were heard together. One was an appeal from the judgment of the Supreme Court of Canada, which had reversed the judgment of the Court of Queen's Bench for Manitoba, which had declared the Public Schools Act of 1890 to be valid. The other was an appeal from the subsequent judgment of the Court of Queen's Bench for Manitoba following the judgment of the Supreme Court. "The judgments under appeal," says Lord Macnaghten in his judgment, "quashed certain bye-laws of the City of Winnipeg which authorized assessments for school purposes in pursuance of the Public Schools Act, 1890, a statute of Manitoba to which Roman Catholics and members of the Church of England alike take exception. The views of

(*k*) *City of Winnipeg v. Barrett*; *City of Winnipeg v. Logan*, L. R. (1892) App. Ca. 445.

the Roman Catholic Church were maintained by Mr. Barrett; the case of the Church of England was put forward by Mr. Logan." Instead, then, of this being a fight between Protestants and Roman Catholics for the possession of the schools, both those bodies appear before the Privy Council making common cause against the non-sectarian school party. Previous to Manitoba becoming a province of the Dominion in 1871, the system of education was voluntary and denominational; after the union a system of denominational education was established. The denominational schools formed under this system were supported partly by the province and partly by special school rates. Lord Macnaghten remarks, "it is, perhaps, not out of place to observe that one of the modes prescribed was 'assessment on the property of the school district,' which must have involved, in some cases at any rate, an assessment on Roman Catholics for the support of a Protestant school, and an assessment on Protestants for the support of a Roman Catholic school." From 1876, however, until 1890, enactments were in force declaring that in no case should a Protestant ratepayer be obliged to pay for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school.

"In 1890," continues Lord Macnaghten, "the policy of the past nineteen years is reversed; the denominational system was entirely swept away. Two Acts in relation to education were passed. The first (53 Vict. c. 37) established a department of education, and a board consisting of seven members, known as the 'Advisory Board.' . . .

One of the powers of the Advisory Board was to prescribe the forms of the religious exercises to be used in schools."

The second (53 Vict. c. 38) enacted "that all Protestant and Roman Catholic School districts should be subject to the provisions of the Act, and that all public schools should be free schools." The provisions relating to religion are as follows:—

"6. Religious exercises in the public schools shall be conducted according to the regulations of the Advisory Board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place.

"7. Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees, it shall be the duty of the teacher to hold such religious exercises.

"8. The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

The Act further provides for the formation, alteration, and union of school districts, for the election of school trustees, and for levying a rate on the taxable property in each school district for school purposes. The refusal to pay these rates, both by the Church of England as well as by the Roman Catholic party, led to the present actions. The question the Privy Council had to decide was,

whether the Public School Acts, 1890, of Manitoba were *ultra vires* or not. Their Lordships decided that these Acts were not *ultra vires*. It was agreed by all parties to the dispute that, previous to the union, there was no law, or regulation, or ordinance relating to education in force. Their Lordships found, therefore, that there were "no rights or privileges with respect to denominational schools existing by law"; consequently none could have been abolished. They found that certain exemptions in favour of Roman Catholics existed under the Acts, whereas no such corresponding exemptions were to be made in the case of Protestants. "Notwithstanding the Public Schools Act, 1890," continues Lord Macnaghten, "Roman Catholics and members of every other religious body throughout the province are free to establish schools throughout the province; they are free to maintain their schools by school fees or voluntary subscriptions; they are free to conduct their schools according to their own religious tenets without molestation or interference. No child is compelled to attend a public school. No special advantage, other than the advantage of education in schools conducted under public management, is held out to those who do attend. As said that it is impossible for Roman Catholics, or for members of the Church of England, to send their children to public schools when the education is not superintended and directed by the authorities of their church, and that, therefore, Roman Catholics and members of the Church of England who are taxed for public schools, and at the same time feel themselves compelled to support their own schools, are in a less

favourable position than those who can take advantage of the free education provided by the Act of 1890. That may be so. But what right or privilege is violated or prejudicially affected by the law? It is not the law which is in fault. It is owing to the religious convictions which every one must respect, and to the teaching of their Church, that Roman Catholics and members of the Church of England find themselves unable to partake of advantages which the law offers to all alike" (1).

Clearly, then, this was a struggle between the denominational school party, and the non-sectarian or free school party. It may be compared to the contest between our board and national schools here. Denominational education has been the chief obstacle to the advance of civilization: it has been the curse of every country of the old and new world alike, and I rejoice to find that the party of progress in Manitoba has so far prevailed.

According to Lord Randolph, the Lieutenant-Governor could not exercise his veto. He could have done so if he had considered the action of his Minister unconstitutional. He did not think so, and, as matters turned out, was right in so thinking. Then we are told the Dominion Government was afraid to exercise its veto. The whole question was raised and discussed in the House of Commons on March 6, 1893, and two subsequent sittings, and that House wisely determined that the question was one for the decision of the Courts, which had been

(1) Pp. 457, 458, L. R. (1892) App. Cas.

established to decide questions of this character; and accordingly the House refused to interfere, although the Premier, Sir John Thompson, expressly stated that the Government was prepared to consider any remedial legislation that might be found necessary. Writing in the spring of this year upon this question, Professor George Bryce stated that Mr. Laurier was mistaken in saying that the new schools in Manitoba were Protestant schools. "Out of 719 schools in Manitoba in 1890, when the Act was passed, ninety-one were Roman Catholic, which are still under Catholic trustees, so that there can be no possibility of a Protestant bias" (m).

Because, argues Lord Randolph, the Protestant majority have oppressed the Catholic minority in Manitoba, the Catholic majority in Ireland will oppress the Protestant minority under Home Rule. This is hardly logical, and, as I have shown, the Manitoba school question was not a case of Protestant *v.* Catholic at all; and even if it were, the conclusion drawn by his Lordship would not necessarily follow. So far, the only religious persecution which has taken place in Ireland of late years has been exercised by Protestants against Roman Catholics. There has not, exclaimed Mr. James Bryce recently in the House of Commons, been a single case of persecution of Protestants by Catholics within the last ten years. But, on the other hand, as is well known beyond all dispute, there have been numerous instances of oppression and

(m) *Canadian Gazette*, 4 May, 1893.

persecution of Catholics by Protestants in the north of Ireland.

"In 1868," we are told, "Nova Scotia sought to have the Union repealed." Now, according to Lord Randolph, in 1868 Nova Scotia voluntarily entered the Union. Further comment is needless. Nova Scotia has never sought to repeal the Union.

In 1870, declares his Lordship, Manitoba rose in rebellion against the Canadian Government. Lord Wolseley's Red River Expedition is, of course, common history, but the causes which brought it about are perhaps less generally known. In 1869 the Dominion Government agreed to purchase from the Hudson Bay Company their territories known as Rupert's Land for £300,000. In this tract of land were included the Red River Settlements, isolated colonies of half-bred French-Canadians and English and Scotch descendants of the Company's old servants.

The Company, without in any way consulting the wishes of the inhabitants, simply handed over these vast territories to the Dominion for so much cash. The Red River settlers, more particularly the half-breeds, determined to resist, and proclaimed Louis Riel as President of the Republic of the North-West. In the internal struggles which then took place between the two parties in the Republic occurred the murder of Hugh Scott, a leader of the party favourable to the Dominion. It was only subsequently to this event that Rupert's Land was conveyed to the Dominion Government, which determined at once to take possession by force. The expedition under Colonel Wolseley reached

Fort Garry, the head-quarters of the new Republic, on 23rd August, 1870, only to find Riel had fled. Not a shot was fired. The troops were enthusiastically received by the party favourable to Canada, and met with no opposition from the disaffected. On 29th June, 1871, the Red River Settlements entered the Union as the Province of Manitoba. To call this affair a rebellion of Manitoba against the Canadian Government, and to give it as an illustration of the failure of the Central Government of Canada, is an obvious absurdity. At the time of the so-called rebellion Manitoba had no existence.

"In 1871," says Lord Randolph, "the New Brunswick Provincial Legislature abolished the rights of the Catholic minority, and did away with their separate schools." What are the facts? By the "Act relating to Common Schools, 1871," non-sectarian common schools were established throughout the province, and all ratepayers were assessed and rated for their support. Nothing was abolished. Under section 93 of the British North America Act, 1867, the separate schools already in existence could not be interfered with, and no attempt is made in this Act of 1871 to do so. The Roman Catholics appealed, on the ground that the assessment was *ultra vires*. "The supremacy of the Imperial Parliament," continues Lord Randolph, "was invoked in vain." This is quite true, but why? Because all the authorities, both of the Dominion as well as of England, the Minister of Justice in Canada, the Courts, the Colonial Secretary of State, and the Judicial Committee of the Privy Council, were of

the opinion that the Legislature had the right to enforce those assessments, and had acted legally within the powers conferred upon them by the Act of 1867, and that the Act was entirely *intra vires* and constitutional.

"In 1876," says Lord Randolph, "there was such an agitation for separation in British Columbia that the Government was compelled to expend large sums of money on British Columbian railways." What is the real history?

By section 11 of the Order in Council (n), which brought British Columbia within the Dominion of Canada, the Government agreed to connect the seaboard of British Columbia with the railway system of Canada, to commence the work within two years, and to complete it within ten years from the date of the Union. This agreement the Government neglected to carry out within the prescribed time, and accordingly, after a formal remonstrance to the Dominion Parliament in 1873, the Provincial Legislature deputed two of its Ministers to proceed to England to petition her Majesty. Before their arrival, however, the Earl of Carnarvon, in a dispatch to the Governor-General, dated 18th June, 1874, offered his services as arbitrator. This offer, and the subsequent terms of the arbitration, were frankly accepted by both parties. In consequence of the magnitude of the undertaking, further delay took place and occasioned much irritation. This was allayed by a visit of the Governor-General, Lord Dufferin, to the province in order to deliver

(n) Dated 16th May, 1871.

an address on the subject and to vindicate the Government from the imputation of bad faith. It is common knowledge that the railway was at last completed to the entire satisfaction of all concerned. To call this dispute an agitation for separation is absurd, and to assert that the Government were obliged to expend large sums of money to prevent this threatened separation is even more ridiculous. The Government was merely fulfilling its part of the agreement of 1871.

Lord Randolph then proceeds to talk largely of the secessionist and annexation party. Now, it is well known that this party is an extremely small and insignificant one in Canada, and has no hold whatever on the mass of the nation. What little influence it has acquired has been obtained from its advocacy of the commercial union with the United States. All Canadian writers, and almost the whole Canadian press, unite in pointing to the growing strength of the feeling of nationality throughout the Dominion.

"In 1882," according to Lord Randolph, "the Farmers' Union advocated secession and annexation to America, and they immediately received very much better terms for their agricultural conditions, and for the laws which regulated the tenure of their land." Whether the first assertion is correct or not I have been unable to ascertain, but I have been equally unable to find any proof of these "better terms" extorted from the Dominion under threat of secession. The only Acts relating to agriculture passed by the Dominion Parliament between 1882 and 1886, are two Acts to prevent fraud in the manu-

facture and sale of agricultural fertilizers (*o*), and an Act respecting Experimental Farm Stations (*p*). I can scarcely believe that these Acts, beneficial as no doubt they are, could have prevailed so far with the secessionist Farmers' Union as to convert them into loyal and contented subjects! If, however, this is the case, Canadian farmers are extremely easy to please.

Lord Randolph recently informed the House of Commons that Professors, when they talk politics, always talk nonsense. This is rather hard, by the way, on Professor Dicey and his "Leap in the Dark"; but then the professor considers that there is no analogy between Home Rule in Canada and Home Rule in Ireland; whereas Lord Randolph, on the contrary, insists that there is. Generalisations are always dangerous, and I cannot help thinking that if his lordship had asserted that politicians when they talk law sometimes talk nonsense, he would have more accurately defined his own position. As a Professor of Constitutional Law and Political History, his lordship cannot be said to have added to his reputation. He is wrong in his law and wrong in his facts. Almost every statement is either absolutely devoid of foundation or inaccurate, and consequently, his conclusions are erroneous, and, in several instances, assuming the premises to be correct, are illogical. And then, after proving himself to be completely ignorant of Canada, her institutions and history, with an assurance only

(*o*) 47 Vict. c. 37, and 48 & 49 Vict. c. 68.

(*p*) 49 Vict. c. 23.

equalled by the ignorance displayed, he coolly asserts that Mr. Gladstone has "never taken the trouble to study Canadian History." Now, considering the part that Mr. Gladstone has played in making Canadian History, such an assertion must be wildly wide of the mark, and it is obvious that what little knowledge his lordship has displayed has been acquired at second hand. No one studying the subject in the original authorities could have made such stupendous blunders. I submit, therefore, that Lord Randolph has utterly failed to make out a case against the successful application of the Home Rule principle in Canada.

Not a tittle of evidence has he produced to show the breakdown of constitutional principles in Canada. His illustrations are either not to point, or are gross misrepresentations. I am not so extravagantly enamoured of Canadian institutions as to assert that Canadian Legislatures have never made a mistake; but I am not called upon to prove his lordship's case. I maintain that, on the whole, Home Rule has been a complete success in Canada, and I further maintain that my original analogy of the Canadian Constitution with that to be set up in Ireland under the present Bill remains unimpaired; and I repeat that the lesson taught by Canada is invaluable as a precedent for the extension of Home Rule to Ireland, and that such extension, arguing from analogy, will meet with similar successful results.

